



## **Guidelines and Procedures for the Disposal of Personal and Real Property**

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# **GUIDELINES AND PROCEDURES FOR THE DISPOSAL OF PERSONAL AND REAL PROPERTY**

## **I. PURPOSE**

These Guidelines and Procedures for the Disposal of Personal and Real Property (hereinafter "Guidelines"), which comply with the applicable provisions of Title 5-A, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority's policy and instructions regarding the disposal of personal and real property. In addition, the Guidelines designate a Contracting Officer who shall be responsible for the Authority's compliance with, and enforcement of, the Guidelines.

## **II. DEFINITIONS (§ 2895)**

- A. "Contracting Officer" shall mean the Chief Operating Officer of the Authority, as appointed by resolution of the Authority's Board Members ("Members") to be responsible for the disposition of property.
- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these Guidelines.
- C. "Property" shall mean personal property in excess of \$5,000 in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

## **III. DISPOSITION OF PROPERTY (§ 2897)**

- A. The Authority has entered into an agreement with the New York State Office of General Services "OGS" for OGS to dispose of all Authority-owned personal property, including but not limited to use of on-line disposal methods by OGS.
- B. In addition, in accordance with New York State law, surplus computers and accessories (monitors and keyboards) and surplus office furniture and other equipment may, with the approval of the Contracting Officer, be transferred to OGS for disposition, and in the case of computers and accessories to the New York City school district.
- C. Except as set forth in Section III.I. below, the Authority may dispose of real property for not less than the fair market value of such property by

sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of Section 2897 of Title 5-A. Provided, however, that no disposition of real property or any interest in real property shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction, and provided further that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

- D. All disposals or contracts for disposal of real property of the Authority shall be made after publicly advertising for bids, except as provided in Section III.F of these Guidelines.
- E. Whenever public advertising for bids is required under Section III.D:
  - i. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;
  - ii. all bids shall be publicly disclosed at the time and place stated in the advertisement; and
  - iii. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.
- F. Disposals and contracts for disposal of property of the Authority may be negotiated or made by public auction without regard to Sections III.D and E above but subject to obtaining such competition as is feasible under the circumstances if:
  - i. the fair market value of the property does not exceed fifteen thousand dollars;
  - ii. the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic

quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under Sections III.D and E above, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

- iii. bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
  - iv. the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;
  - v. such action is otherwise authorized by law; or
  - vi. under those circumstances permitted by Section III.I. below.
- G. An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
- i. any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses ii. through iii. of this paragraph;
  - ii. any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;
  - iii. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property; or
  - iv. any personal property which has an estimated fair market value in excess of fifteen thousand dollars.
- H. Each such explanatory statement referenced in Section III.G. above shall be transmitted to the persons entitled to receive copies of the report required under Section IV.B. hereof not less than ninety days in advance of such disposal and a copy thereof shall be preserved in the files of the

Authority.

I. Property Disposal for Less than Fair Market Value

- i. No asset owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its fair market value except if:
  - a. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
  - b. the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
  - c. in the event the Authority seeks to transfer an asset for less than its fair market value other than through a. or b. above, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the senate, or the assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either house of the Legislature shall take the form of a resolution by such house. The Governor and each house of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.
- ii. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Members and the public:
  - a. a full description of the asset;
  - b. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Members;

- c. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
  - d. a statement of the value to be received compared to the fair market value;
  - e. the names of any private parties participating in the transfer and if different than the statement required by subparagraph d. of this paragraph, a statement of the value to the private party; and
  - f. the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- iii. Before approving the disposal of any property for less than fair market value, the Members shall consider the information described in paragraph ii. above and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.
- G. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Authority, purporting to transfer title or any other interest in property of the Authority under the Guidelines shall be conclusive evidence of compliance herewith insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

#### **IV. REPORTING REQUIREMENTS (§ 2896)**

- A. The Authority shall publish, not less frequently than annually, a report of all real property of the Authority. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Authority and the name of the purchaser for all such property sold by the Authority during such period.
- B. Such report shall be submitted to the Comptroller, the Director of the

Budget, the Commissioner of General Services, the Legislature, and the Authorities Budget Office.

- C. These Guidelines, as approved by the Members, shall be reviewed and approved annually by the Authority's Board. On or before the thirty-first day of March in each year, the Authority shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Members, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the Comptroller, the Authority shall also post such Guidelines on the Authority's internet website and maintain such Guidelines on the website.
  - a. The Authority shall maintain adequate inventory controls and accountability systems for all personal and real property under the Authority's control.
    - i. The Authority shall periodically inventory such property to determine which property shall be disposed of.
    - ii. The Authority shall dispose of Authority personal and real property interests in accordance with the Guidelines.
    - iii. The Contracting Officer shall prepare annual reports of personal and real property disposal transactions.

## **V. EFFECTIVE DATE**

- A. These Guidelines shall take effect on and apply to contracts entered into after the date of approval by the Members, except as otherwise provided by law.